No. 708.

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CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

CREDIT ALLIANCE CORPORATION.

MEMORANDUM OF RESPONDENT.

NEWELL W. ELLISON,
DUANE R. DILLS,
JACK J. LEVINSON,
CHRISTOPHER S. SARGENT,
Attorneys for Respondent.

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MEMORANDUM OF RESPONDENT.

In view of the conflict between the Circuit Courts of Appeals on the question whether Section 27 (f) of the Revenue Act of 1936 is modified by Section 27 (h) of that Act[1], Respondent does not oppose the grant of certiorari in this case.

The Government urges as a second reason for the granting of the petition that the Court below, in holding the dis-

[1] The Government prevailed, one judge dissenting, in *Centennial Oil Co.* v. *Thomas, Collector of Internal Revenue*, 109 F. (2d) 359 (C. C. A. 5). Since that time, the Court below decided the instant case against the Government, as did the Court in *Commissioner of Internal Revenue* v. *Kay Manufacturing Corp.*, 122 F. (2d) 443 (C. C. A. 2).

tribution in this case to be "properly chargeable to the earnings or profits" of the Respondent within the meaning of Section 27 (f), appears to have established a principle inconsistent with the decision of the Circuit Court of Appeals for the Second Circuit in *Commissioner* v. *Sansome*[2] and possibly in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in *Centennial Oil Co.* v. *Thomas*[3]. Respondent points out in complete answer that the decision in the *Sansome* case was by the same Court that later decided the *Kay Manufacturing Corp.* case[4] in favor of the taxpayer. Furthermore, the Court, in the *Centennial Oil Co.* case, did not discuss or refer to the question whether the distribution was "properly chargeable to the earnings or profits". If this were the only reason assigned by the Government for the grant of the petition, its petition should be denied because this argument of the Government was properly rejected by the Court below and the Court in the *Kay Manufacturing Corp.* case and has never been approved by any court.

Respectfully submitted,

NEWELL W. ELLISON,
DUANE R. DILLS,
JACK J. LEVINSON,
CHRISTOPHER S. SARGENT,
Attorneys for Respondent.

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[2] *Commissioner of Internal Revenue* v. *Sansome*, 60 F. (2d) 931 (C. C. A. 2), certiorari denied, 287 U. S. 667.

[3] 109 F. (2d) 359 (C. C. A. 5).

[4] *Commissioner of Internal Revenue* v. *Kay Manufacturing Corp.*, 122 F. (2d) 443 (C. C. A. 2). This case and the instant case involve exactly the same questions and the Government has filed a petition for certiorari contemporaneously with the filing of the petition in the instant case.